

Advice Memorandum

2 In May, a supervisor informed the security guards that they were not to receive union information and that Union representatives were not allowed in the building. The Region is investigating charges that the Employer

visited the Gas Company Tower and distributed buttons to the security guards containing the message, "In Remembrance of Our Unsung Heroes."³ The Union representative told employees that the Union was distributing the button because it was the anniversary of the September 11 terrorist attacks, and that she hoped employees would wear the button to honor service workers who died in the World Trade Center. During this same time period, a MaguirePartners representative distributed to the security guards a postage-stamp sized commemorative flag pin depicting firefighters raising the flag at ground zero.⁴

On around September 10, a MaguirePartners manager approached security guard Lopez while he was on duty. Lopez was wearing four pins.⁵ Referring to the "Unsung Heroes" button, the MaguirePartners manager asked, "what you got there? That button." Lopez responded that a "lady" gave it to him and asked him to wear it, and that the button "represented the service workers who died in the WTC." The manager responded, "How about that," and walked away. Fifteen to twenty minutes later, Employer Security Director Heckler approached Lopez and told him, "I need you to take that button off." Lopez asked which button he was to remove, and Heckler pointed to the "Unsung Heroes" button. Lopez responded "no." When Heckler repeated his demand, Lopez responded, "Do you know what this button stands for? This button represents security, janitors and service workers who lost their lives at the World Trade

questioned and interrogated employees about their Union activities, transferred employees from their posts because of their Union activities, and reduced employees' hours because of Union activity. The Region has not submitted these allegations for advice.

³ The button, approximately 2-¼ inches in diameter, has a purple background containing a smaller circle with a gold image of the Twin Towers amidst a waving American flag. The words, in white print, are written around the top of the button.

⁴ Although security guard Lopez testified that he received this pin on September 11, the evidence indicates that Lopez was already wearing the pin on September 10.

⁵ These were the "Unsung Heroes" button; a dime-sized brass or copper "officer of the month" pin issued by the Employer; the commemorative flag pin distributed by MaguirePartners; and a postage stamp-sized American flag pin distributed by the Employer shortly after September 11, 2001.

Center." Heckler again asked Lopez to remove the button, and Lopez did.

At the 2:30 p.m. shift change, security guard Jamison came to relieve Lopez. Jamison was wearing the "Unsung Heroes" button. Lopez told Jamison about what had happened with Security Director Heckler. Lopez then saw security employee Gramajo and asked her if she also had the button. Gramajo showed Lopez the button, and Lopez recounted his experience with Heckler. Gramajo said that she did not care and that she was not afraid.

Later that day, supervisor Cruz approached Gramajo and Jamison and told them that they had to remove the "Unsung Heroes" buttons. The employees refused and asked why they had to remove them. Cruz told them that both MaguirePartners and Employer Post Commander Madrigal "want[ed] everyone to remove the pin." Cruz walked away and the employees went to their respective posts. About 15 minutes later, Employer Security Director Heckler approached Gramajo and told her that she was not supposed to wear the button. When Heckler asked Gramajo why she was wearing it, Gramajo stated that the button just honored the people who died on September 11th. Heckler stated that Gramajo could not wear the button because MaguirePartners did not approve it. Gramajo replied that she had a right to wear the button. When Heckler repeated that she had to remove the button, Gramajo again refused. Eventually, Heckler stated that in light of Gramajo's refusal to remove the button, she had to leave. Gramajo asked Heckler whether the Employer was "going to let me go just for this button." Heckler responded, "We don't want you to leave, we just want you to remove the button." Gramajo then left and reported to the Employer's command center.⁶ At the command center, Gramajo turned in her radio and key cards, as she did at the end of each shift. Post Commander Madrigal then asked Gramajo for her parking pass, which employees usually retain at the end of their shift.

After leaving the building, Gramajo called a Union representative, who suggested that she call the Employer to determine whether she had been fired. Gramajo called Madrigal and asked whether she was going back to work the next day. Madrigal initially answered, "Yes, you're going back to 'Branch.'"⁷ Gramajo asked, "are you guys firing me for the pin?" Madrigal answered that the button was not

⁶ On her way to the command center, Gramajo saw Jamison, who stated that she was no longer wearing the button because the Employer told her to remove it.

⁷ The Branch office is the Employer's headquarters.

approved and that she was not supposed to have it on. Gramajo repeated, "so are you guys firing me or what?" Madrigal eventually responded, "yes."

On September 11, Gramajo and about ten Union representatives stood in front of the Gas Company Tower building and handed out flyers that said something to the effect of "Langner Security Officer Ivonne Gramajo was fired by Sergio Madrigal for remembrance and paying honor to the heroes that lost their lives. We ask for her to get her job back." While Gramajo was handing out flyers, Madrigal approached and instructed her to go to the Branch office.

On September 12, Gramajo telephoned the Branch office, and the following afternoon, she met with a human resource representative and Employer owners Claudia and Roger Langner. Roger Langner asked Gramajo for her side of the story. After Gramajo gave her explanation, Langner stated that "they are your employer. It is their uniform and their policies and rules. You have to follow their rules. You don't have that right." Gramajo told Langner that Madrigal had told her that she was fired. Langner responded that "only Langner can tell you that you're fired." Langner stated that he was upset about the flyer that Gramajo had handed out, and that the flyer distribution had interrupted the extra security that had been arranged that day at the Gas Tower. Langner added that although he could terminate Gramajo for not obeying the supervisor's order to remove the button, he would not. Langner rejected Gramajo's request to return to the Gas Tower, but agreed to give Gramajo some time to think about being reassigned to a different post.

On September 13, the Employer issued a memo to the security guards "to reiterate" the Employer's uniform appearance policy. The memo stated that the "only approved and company sanctioned employee provided additions to the standard Langner uniform are black shined shoes and a black leather belt," and that the only exception to this policy was the flag pin issued to employees shortly following the terrorist attacks on September 11, 2001.⁸ The memo further stated that any additions to the uniform had to be "mutually agreed upon and approved" by MaguirePartners and the Employer.

⁸ The memo did not mention the commemorative flag pin distributed to the security guards by MaguirePartners earlier that week.

On September 14, Gramajo called the Branch office and stated that she was interested in another post. By September 19, the Employer had reassigned Gramajo to the Wiltern Theatre at the same hours and rate of pay.⁹

Applicable written uniform and appearance policies

The Employer maintains a written "Uniform and Appearance Policy" that requires security guards to be "in full uniform at all times while on duty." The policy prohibits certain hairstyles because they "detract from the uniform appearance of Langner officers," and also provides in pertinent part:

Female officers fingernails must be of a reasonable length with no polish or with a neutral polish color. Female officers' makeup must be kept to a minimum.

Visible body piercing, including earrings, for male officers are prohibited. Male officers may wear a single finger ring and a wristwatch while on duty. Visible body piercing, other than a single pair of stud earrings, is not allowed for female officers. Female officers may wear a single finger ring and a wristwatch while on duty.

Remember when you put on your uniform you are a representative of Langner Security Services, Inc. It is important to always look your best while on duty. Let us work together to continue to make Langner the best in the security industry.

MaguirePartners provides the security guards' uniforms. In addition to its own Uniform and Appearance Policy, the MaguirePartners' written policy provides in pertinent part:

Because contracted employee uniforms are standardized for all MaguirePartners properties, individual enhancements such as accessories or other non-standard items are not permitted. Only those items issued as the basic uniform compliment [sic] are to be worn.

ACTION

We conclude that the security guards were engaged in Section 7 activity for their mutual aid or protection when

⁹ Gramajo no longer wishes to return to the Gas Tower building.

they wore buttons containing the message, "In Remembrance of Our Unsung Heroes." However, the Region should further investigate, based on the analysis below, to determine whether the Employer has demonstrated special circumstances justifying its prohibition of the buttons.

I. The employees were engaged in activity for mutual aid or protection

Section 7 provides that "[e]mployees shall have the right ... to engage in ... concerted activities for the purpose of collective bargaining or other mutual aid or protection." The mutual aid or protection clause protects employees from retaliation by their employers for activities that relate to matters affecting "employees' interests as employees," even if they are outside the immediate employment context.¹⁰ This includes employees' efforts to improve working conditions through resort to administrative, political, and judicial forums,¹¹ and extends to employees' concerted activities in support of employees of employers other than their own.¹² As the Board has explained, "employees making common cause with fellow employees of another employer are engaged in protected concerted activity because, even though 'the immediate quarrel does not itself concern them,' the solidarity thus established assures them, if their 'turn ever comes,' of the support of those 'whom they are all then helping.'"¹³

¹⁰ Eastex, Inc. v. NLRB, 437 U.S. 556, 566-567 (1978). See, e.g., G & W Electric, 154 NLRB 1136, 1137 (1965) (Section 7 is not strictly confined to activities immediately related to the employment relationship or working conditions, but extends to indirectly related activity, such as communicating with employees about the credit union). Compare Harrah's Lake Tahoe Resort Casino, 307 NLRB 182 (1992) (employee's efforts at seeking employee support for his Employee Stock Option Plan was designed to cast employees in the role of owners, and thus did not relate to the "interests of employees qua employees").

¹¹ Eastex, Inc. v. NLRB, id. at 565-566.

¹² Id. at 564-565. See also Triangle Electric, 335 NLRB No. 82 (2001) (selling and distributing a strike newspaper written and published by striking newspaper employees of another employer protected); Raley's, Inc., 311 NLRB 1244 (1993) (wearing "Solidarity Works" pin in support of employees of a sister local protected).

¹³ Boise Cascade, 300 NLRB 80, 82 (1990), citing NLRB v. Peter Cailler Kohler Swiss Chocolates Co., 130 F.2d 503, 505-506 (2d Cir. 1942).

Applying this reasoning, the Board has found employees to be engaged in mutual aid and protection when they wore buttons referring not to a dispute between their own employer and union, but "to the working conditions of employees of another employer."¹⁴ Moreover, the fact that a button does not specifically identify the union does not deprive it of Section 7 protection.¹⁵

In the instant case, we conclude that the security guards were engaged in Section 7 activity when they wore the "Unsung Heroes" button because they did so to make common cause with employees of other employers who, like them, worked under potentially dangerous working conditions. Thus, the Union representative who distributed the button to the security guards asked them to wear it to honor service workers who died in the World Trade Center. When a MaguirePartners manager asked employee Lopez about the button, Lopez responded that it "represented the service workers who died in the WTC." After Employer Security Director Heckler told Lopez to remove the button, Lopez responded, "This button represents security, janitors and service workers who lost their lives at the World Trade Center." After security guard Gramajo was removed from duty for wearing the button, employees and Union representatives handed out flyers stating that she was fired for "remembrance and paying honor to the heroes that lost their lives." These statements make clear that by wearing the button, the security guards expressed solidarity with other employees who, like themselves and those who died in the World Trade Center, worked in dangerous jobs. Indeed, that the security guards also worked in potentially dangerous jobs was underscored by Employer Langner's rebuke to Gramajo that her September 11 flyer distribution interrupted the extra security that had been arranged that day at the Gas Tower. Accordingly, we conclude that the security guards were engaged in activity for their mutual aid or protection when they wore buttons containing the message, "In Remembrance of Our Unsung Heroes."

¹⁴ Boise Cascade Corp., id. at 82, citing Eastex, 437 U.S. at 564-565 (by wearing the pin, employee was "making common cause" with employees in a sister local in their dispute with their employer); Raley's, Inc., 311 NLRB at 1249-1250.

¹⁵ Southern California Edison, 274 NLRB 1121, 1123-1124 (1985) (slogans not containing union identification, but known to be a union communication, were protected).

II. Whether the Employer can demonstrate special circumstances

Even where the wearing of buttons or insignia comes within the "mutual aid or protection" clause, an employer may still be able to demonstrate special circumstances that would justify prohibition of such a practice.¹⁶ One such special circumstance involves an employer's business interest in preserving a "public image which the employer has established, as part of its business plan, through appearance rules for its employees."¹⁷ In determining whether the employer's concerns about its "public image" justify a ban on union insignia, the Board considers both the importance of the asserted "public image" to the employer's business¹⁸ and whether the particular insignia reasonably could have interfered with that image.¹⁹ The Board examines such factors as the size and appearance of the button and whether the words on the button are provocative.²⁰ The Board also considers whether the

¹⁶ Republic Aviation Corporation v. NLRB, 324 U.S. 793, 803-804 (1945). See also Southwestern Bell Telephone Co., 200 NLRB 667, 669-670 (1972).

¹⁷ United Parcel Service, 312 NLRB 596, 597 (1993), enf. denied 41 F.3d 1608 (6th Cir. 1994). See Con-Way Central Express, 333 NLRB 1073, 1076 (2001); United Parcel Service, 195 NLRB 441 (1992). But see Eckerd's Market, Inc., 183 NLRB 337, 338 (1970) (mere contact with customers not basis for prohibiting employees from wearing union buttons).

¹⁸ United Parcel Service, 195 NLRB at 441 fn. 2 (employer lawfully prohibited 2-½ inch button referring to an internal union campaign, where the image of a neatly uniformed driver was integral to the employer's image to its customers and the general public).

¹⁹ United Parcel Service, 312 NLRB at 597 (small, neat, inconspicuous pin free of any provocative message did not interfere with their desired image as neatly attired); Nordstrom, Inc., 264 NLRB 698, 701-702 (1982) (customer exposure to discreet, inconspicuous union insignia, standing alone, is not a special circumstance permitting an employer to prohibit its display); Waterbury Hotel Management LLC, 333 NLRB 482, 546 (2001) (employer failed to establish special circumstances where button was small, discreet, non-confrontational, tasteful and likely to blend in).

²⁰ United Parcel Service, 312 NLRB at 597; Nordstrom, Inc., 264 NLRB at 701.

employer has previously permitted employees to deviate from its appearance policy.²¹

Here, it is clear that the Employer does have a business interest in preserving its security guards' uniformity of appearance. It is axiomatic that by wearing uniforms, security guards convey a message of authority to the general public that enables them to more effectively carry out their jobs. The Gas Company Tower security guards wear McGuirePartners-issued uniforms and are expected to follow McGuirePartners' regulations, which permit the wearing of "[o]nly those items issued as the basic uniform [complement]" and prohibit "individual enhancements such as accessories or other non-standard items" In addition, the Employer maintains written guidelines regarding proper attire and appearance covering a variety of matters as hairstyles, nail polish, and body piercing. The Employer thus relies on its security guards' uniform to at least the same degree as do other industries where the Board has permitted limitations on union insignia.²²

However, resolution of this issue requires a determination of whether the insignia here reasonably interfered with that image. As an initial matter, the Employer clearly did not consider the wearing of pins or buttons *per se* to interfere with its image because it had authorized the wearing of at least three other pins at the same time that it prohibited the "Unsung Heroes" button. The Employer also cannot reasonably argue that it considered the "Unsung Heroes" message itself to be provocative or inappropriate such as to interfere with its public image, since two of the pins it had authorized contained a similar message commemorating the events at the World Trade Center.

Thus, to justify its prohibition, the Employer must demonstrate that the button's appearance itself interfered with the Employer's public image. In that regard, the button is arguably larger and brighter, and thus more conspicuous, than the three other authorized pins. However, we do not know whether the Employer has previously permitted other deviations from its appearance policy regarding buttons, pins or other accessories and, if it has, how those deviations may have compared in conspicuousness, size or discretion to the "Unsung Heroes" buttons prohibited here. Accordingly, the Region should

²¹ See Meyer Waste Systems, 322 NLRB 244, 247-248 (1996) (wearing of buttons protected, where employer allowed employees to deviate from uniform policy).

²² See United Parcel Service, 195 NLRB at 441.

investigate the Employer's past practice with respect to the wearing of buttons, insignia, or other accessories, and analyze whether its prohibition of the "Unsung Heroes" button conforms to that practice. Based on those findings, as well as any position statements regarding the nature of the buttons' appearance that the parties may wish to submit, the Region should determine whether the Employer has demonstrated special circumstances justifying its prohibition of the button. The Region should then resubmit the case to Advice.

B.J.K.